



General Assembly

Amendment

January Session, 2011

LCO No. 8237

SB0097308237SD0

Offered by:

SEN. PRAGUE, 19th Dist.

SEN. MCKINNEY, 28th Dist.

To: Subst. Senate Bill No. 973

File No. 331

Cal. No. 222

**"AN ACT CONCERNING THE DETERMINATION OF UNDUE
HARDSHIP FOR PURPOSES OF MEDICAID ELIGIBILITY."**

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective July 1, 2011*) (a) Except as provided in
4 subsection (c) of this section, the Commissioner of Social Services shall
5 not impose a penalty period pursuant to subsection (a) of section 17b-
6 261 of the general statutes, as amended by this act, or subsection (a) of
7 section 17b-261a of the general statutes if such imposition would create
8 an undue hardship.

9 (b) For purposes of this section, "undue hardship" exists when (1)
10 the life or health of the applicant would be endangered by the
11 deprivation of medical care, or the applicant would be deprived of
12 food, clothing, shelter or other necessities of life, (2) the applicant is
13 otherwise eligible for medical assistance under section 17b-261 of the
14 general statutes, as amended by this act, but for the imposition of the

15 penalty period, (3) if the applicant is receiving long-term care services
16 at the time of the imposition of a penalty period, the provider of long-
17 term care services has notified the applicant that such provider intends
18 to discharge or discontinue providing long-term care services to the
19 applicant due to nonpayment, (4) if the applicant is not receiving long-
20 term care services at the time of the imposition of a penalty period, a
21 provider of long-term care services has refused to provide long-term
22 care services to the applicant due to the imposition of a penalty period,
23 and (5) no other person or organization is willing and able to provide
24 long-term care services to the applicant.

25 (c) The commissioner shall impose a penalty period pursuant to
26 subsection (a) of section 17b-261 of the general statutes, as amended by
27 this act, or subsection (a) of section 17b-261a of the general statutes if
28 (1) the applicant made a transfer or assignment of assets to deliberately
29 impoverish such applicant in order to obtain or maintain eligibility for
30 medical assistance, or (2) the transfer or assignment of assets was made
31 by the applicant's legal representative or the joint owner of the assets.
32 The commissioner may waive the imposition of a penalty period
33 pursuant to this subsection if (A) the applicant suffers from dementia
34 or other cognitive impairment and cannot explain the transfer or
35 assignment of assets, (B) the applicant suffered from dementia or other
36 cognitive impairment at the time the transfer or assignment of assets
37 was made, (C) the applicant was exploited into making the transfer or
38 assignment of assets due to dementia or other cognitive impairment, or
39 (D) the applicant's legal representative or the record owner of a jointly
40 held asset made the transfer or assignment of assets without the
41 authorization of the applicant.

42 Sec. 2. (NEW) (*Effective July 1, 2011*) (a) As used in this section and
43 section 1 of this act, "applicant" means an applicant for or recipient of
44 medical assistance pursuant to section 17b-261 of the general statutes,
45 as amended by this act.

46 (b) If the Commissioner of Social Services, in determining an
47 applicant's eligibility for medical assistance pursuant to section 17b-

48 261 of the general statutes, as amended by this act, intends to impose a
49 penalty period as a result of a transfer or assignment of assets pursuant
50 to section 17-261 of the general statutes, as amended by this act, or
51 section 17b-261a of the general statutes, the commissioner shall
52 provide a preliminary notice to the applicant. Such notice shall include
53 a statement that the applicant may contest the imposition of a penalty
54 period by (1) filing a claim of undue hardship, as defined in section 1
55 of this act, or (2) providing evidence to rebut the presumption
56 resulting in the imposition of a penalty period pursuant to subsection
57 (a) of section 17b-261a of the general statutes. The applicant shall have
58 fifteen days after the date on which the preliminary notice is
59 postmarked to contest the imposition of a penalty period indicated in
60 such preliminary notice. The commissioner shall grant one extension
61 of time to file such claim or provide such evidence if requested by the
62 applicant and shall grant additional extensions of time if reasonable.
63 Failure to file a claim of undue hardship under this subsection shall
64 not prohibit an applicant from making a claim of undue hardship at an
65 administrative hearing.

66 (c) If the applicant contests the imposition of a penalty period
67 pursuant to subsection (b) of this section, the commissioner shall
68 provide an interim decision notice to the applicant not later than ten
69 days after the applicant files a claim or provides evidence pursuant to
70 subsection (b) of this section. The interim decision notice shall denote
71 the commissioner's decision to either reverse or uphold the imposition
72 of a penalty period indicated in the preliminary notice. If the
73 commissioner decides to uphold the imposition of a penalty period,
74 the interim decision notice shall specify the projected commencement
75 and expiration dates of such penalty period.

76 (d) When the commissioner determines the eligibility of an
77 applicant for medical assistance under section 17b-261 of the general
78 statutes, as amended by this act, the commissioner shall provide a final
79 decision notice to the applicant. Such final decision notice shall include
80 (1) a statement confirming any determination the commissioner made
81 with regard to the imposition of a penalty period pursuant to this

82 section, and (2) a description of the applicant's appeal rights.

83 (e) If, during the course of a penalty period, an applicant receives
84 notice from a provider of long-term care services that the provider
85 intends to (1) discharge the applicant, (2) discontinue providing long-
86 term care services to the applicant, or (3) refuses to provide long-term
87 care services to the applicant because of the imposition of a penalty
88 period against the applicant pursuant to subsection (a) of section 17b-
89 261 of the general statutes, as amended by this act, or subsection (a) of
90 section 17b-261a of the general statutes, the applicant shall have not
91 more than sixty days after receiving such notice to file a claim of
92 undue hardship with the commissioner. Not later than ten days after
93 receiving such claim, the commissioner shall provide a final decision
94 notice to the applicant. Such final decision notice shall inform the
95 applicant whether or not (A) the commissioner has determined that
96 undue hardship exists, and (B) the penalty period shall be waived.

97 (f) (1) A nursing home, on behalf of an applicant, may request an
98 extension of time to claim undue hardship pursuant to subsections (b)
99 and (e) of this section if (A) the applicant is receiving long-term care
100 services in such nursing home, (B) the applicant has no legal
101 representative, and (C) the nursing home provides certification from a
102 physician that the applicant is incapable of caring for himself or
103 herself, as defined in section 45a-644 of the general statutes, or
104 incapable of managing his or her affairs, as defined in section 45a-644
105 of the general statutes. The commissioner shall grant such request to
106 allow a legal representative to be appointed to act on behalf of the
107 applicant.

108 (2) The commissioner shall accept any claim filed pursuant to
109 subsection (b) of this section by a nursing home and allow the nursing
110 home to represent the applicant with regard to such claim if the
111 applicant or the legal representative of the applicant gives permission
112 to the nursing home to file a claim pursuant to subsection (b) of this
113 section.

114 Sec. 3. Subsection (c) of section 17b-261 of the general statutes is
 115 repealed and the following is substituted in lieu thereof (*Effective from*
 116 *passage*):

117 (c) For the purposes of determining eligibility for the Medicaid
 118 program, an available asset is one that is actually available to the
 119 applicant or one that the applicant has the legal right, authority or
 120 power to obtain or to have applied for the applicant's general or
 121 medical support. If the terms of a trust provide for the support of an
 122 applicant, the refusal of a trustee to make a distribution from the trust
 123 does not render the trust an unavailable asset. Notwithstanding the
 124 provisions of this subsection, the availability of funds in a trust or
 125 similar instrument funded in whole or in part by the applicant or the
 126 applicant's spouse shall be determined pursuant to the Omnibus
 127 Budget Reconciliation Act of 1993, 42 USC 1396p. The provisions of
 128 this subsection shall not apply to special needs trust, as defined in 42
 129 USC 1396p(d)(4)(A). For purposes of determining whether a
 130 beneficiary under a special needs trust, who has not received a
 131 disability determination from the Social Security Administration, is
 132 disabled, as defined in 42 USC 1382c(a)(3), the Commissioner of Social
 133 Services, or the commissioner's designee, shall independently make
 134 such determination. The commissioner shall not require such
 135 beneficiary to apply for Social Security disability benefits or obtain a
 136 disability determination from the Social Security Administration for
 137 purposes of determining whether the beneficiary is disabled."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	New section
Sec. 2	<i>July 1, 2011</i>	New section
Sec. 3	<i>from passage</i>	17b-261(c)